

The Cake-Walk Homicide.

[Reported for the Baltimore Sun.]

The greater part of yesterday was consumed in the Criminal Court in the argument on the admissibility of the Order No. 13 of the police board in evidence for the defense in the trial of Patrick McDonald for the murder of Daniel Brown, colored, the "cake walk" case.

POLICE ORDER NO. 13.

The order instructs police officers in regard to their duty in arrests, and says that in cases of breach of the public peace in their sight or hearing they may arrest without having a warrant, and even break open doors for that purpose. Its admissibility was contended for by Messrs. Poe and Hambleton, and argued against by Messrs. Stockbridge and Knott.

ARGUMENT ON ORDER 13.

Mr. Stockbridge said a policeman has only the powers of a constable or other peace officer under the common law with such others, if any, as have been conferred by statute. His duties are to preserve the public peace, the rights of property and person, prevent crime and arrest offenders. Acting under an unlawful order of his superiors is no excuse for a policeman. If he enters a house unjustifiably he is responsible for the consequences that flow therefrom. He has no more right to use force when arresting unlawfully than a private person.

REMARKS OF MR. POE.

Mr. Poe said the defense offered the order under their pleas of justification and palliation; if lawful, in justification; if unlawful, in palliation and to reduce the grade of the offense. They claimed the order was lawful, and therefore a full defense. He quoted the case in which the Court of Appeals decided that a police officer who saw a person fire a cracker in his own yard, in violation of a city ordinance, rightfully entered the premises and arrested the person. Mr. Poe quoted other cases.

REMARKS OF MR. HAMBLETON.

Mr. Hambleton, for the defense, said the maxim that an Englishman's house is his castle has been modified by the changes of time. The sound of trumpets in a baronial hall would not annoy a next-door neighbor; but could a shooting gallery crack away all night and neighbors in a crowded city not be disturbed, giving them the right to have the noise cease at untimely hours? Must an officer be turned away from a door where he has reason to suspect wrong doing by the answer that it is an innocent game of cards or chaste conversation that he would interfere with. Should the officer turn away then would his superiors be satisfied he had done his duty well?

REMARKS OF MR. KNOTT.

Mr. Knott said if this order of the police board can shield a police officer from the consequences of his violence, and he can stalk through the streets red with the blood of his brother, but free from all legal responsibility, then it is time this community knew it; then does the sceptre of the Queen of England pale in authority before the baton of the police marshal of Baltimore. Such authority would find equality only in companion with the despotic sway of a Sultan of Turkey. Then to a charge of murder, assault or trespass *vi et armis*, the policeman only needs to point to his coat of blue or the star on his breast as a sufficient answer.

Somewhat of this sort of power was familiar to the people of this country a few years ago, when a plea of necessity was set up to justify the most startling and pernicious departures from the principles of the constitution. Then from no mouth or pen did such doctrines meet a more stern and withering rebuke than from the gentleman whose name and opinion has been invoked to give sanction to this law of the defense. The powers of policemen should be upheld by every competent authority and in every proper way, but by reason of their greater power and knowledge they should be held to a strict accountability when they pervert their power and sin against that knowledge.

DECISION OF JUDGE GILMOR.

Judge Gilmor said he was of opinion that this order was not admissible as evidence in the case properly. The only point which struck the mind of the court in the able arguments for its admission was that it was important in enabling the jury to grade the offense. The crime with which the prisoner is charged embraces several distinct grades of offense, and the argument has some force in this view.

But there is another view to be taken of the effect of this evidence, and that is that it might lead the jury to give it too preponderating an influence.

A question to be considered, is should this arrest have been made at all by the officer? If so, did the officer, in making the arrest, conduct himself in accordance with the law of his duty?

He gave an opinion earlier in this case on the right of an officer to arrest without a warrant under various circumstances. It is not necessary for the court now to express itself upon the authority of the officer to make the arrest, the jury being by the constitution of the State the judges of the law as well as the fact ultimately. But where are the jury to go for the light to guide their way in deciding on the law? Are the orders of the board of police commissioners to control their views, or are they bound to go to those standards of principle which the law itself affords for their guidance and instruction? It is possible there is a slight divergence from the correct principles of the law in the order itself. It is hardly allowable that a mere noise is such disorder as will meet the requirements and intention of the order. Whatever the opinion of the court on the law, the counsel have still the right to enforce their views on the jury, who are the judges of the law as to the orders of the police board as well as other things. The court must insist that the jury shall be allowed to determine the question for themselves in so far as it may be brought properly before them by counsel.

The defense took an exception to the rejection of the evidence, order No. 13.

EVIDENCE FOR THE DEFENSE.

Mrs. Anna Roche testified she lives at No. 58 Tyson alley, half a square from No. 41. Brown's house. On the night of the 30-31 of last July she was greatly disturbed by a noise that must have come from Brown's house. On cross-examination she said she was awoke out of her sleep; did not hear a pistol shot.

Deputy Marshal Frey testified that the reputation of McDonald as a peaceable, forbearing, humane man was first-class.

Marshal Gray testified that he was known as a quiet and gentle officer all the time he was on the force.

Captain Earhart, Sergeants Zimmerman and Knott, John M. Crenser, policeman Horrigan, John A. Holman, Thomas Gill, George Alpeter, Wm. H. Holman and C. Schlenther all testified to his good character, the latter saying McDonald was one of the best officers on the beat for nineteen years.

Thomas Gill testified he is twenty-four years old; is a brakeman on the Northern Central railroad; on the night of July 30-31 he was on the lumber pile corner of Park avenue and Tyson street; came from Lancaster city on the 29th, had no place to go to and no work, and lay down on the lumber; heard noise enough to wake the whole neighborhood; it woke him; could not hear what was said, but saw the officer come to the door and go away; saw a colored man come down from the steps towards the officer and two other colored men come out on the steps of the house; heard the colored man say to the officer, "You can't arrest me or any one in my house, you Irish s— of a b—;" the officer turned right around and came back at them; then the colored fellow on the sidewalk he struck at him and jumped back on the steps with the officer after him; the two colored fellows standing on the steps got down on the pavement, and when the officer got on the steps after the man who struck him the other two shoved him in the door. Witness walked past the house down Tyson street; heard some one say as he passed, "Unlock that door;" the door was shut; went down Tyson alley to Park street; heard a kind of heavy noise; as witness stood at the corner three colored men came out the back way and cut across Park street to the lumber pile; heard them say—

[Here objection was made, and the remark was not repeated by witness.]

Witness then saw the officer come out, and he then went to Mount Vernon village.

On cross-examination, he said he lived in Lancaster three years with a baker; he only applied to one baker at Mount Vernon for work, and having failed also in getting work Thursday and Friday, he went back to Lancaster; has been a brakeman on the string team two months past. The witness was questioned searchingly by the counsel for the State as to who he was, and his doings on the 29th and 30th. Without concluding the examination the court adjourned.